

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

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**In the Matter of  
Luminant Generation Company, LLC  
Comanche Peak Nuclear Power Plant  
Combined License Adjudication**

**Rulemaking Docket No. \_\_\_\_\_  
Docket Nos. 52-034 and 52-035  
August 11, 2011**

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**RULEMAKING PETITION TO RESCIND PROHIBITION  
AGAINST CONSIDERATION OF ENVIRONMENTAL IMPACTS  
OF SEVERE REACTOR AND SPENT FUEL POOL ACCIDENTS  
AND REQUEST TO SUSPEND LICENSING DECISION**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. § 2.802, Intervenors petition the U.S. Nuclear Regulatory Commission (“NRC”) to rescind regulations in 10 C.F.R. Part 51 that make generic conclusions about the environmental impacts of severe reactor and spent fuel pool accidents and that preclude consideration of those issues in individual licensing proceedings. This petition also requests the NRC to suspend the above-captioned licensing proceeding while the NRC considers this petition and the environmental issues raised in the attached Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (“Contention”).

This petition is captioned in both the rulemaking docket and the docket for the COL licensing proceeding because it seeks relief that is both generic and applicable to the individual proceeding. The rulemaking petition is also being filed by other organizations and individuals who have submitted contentions regarding the safety and environmental implications of the NRC’s report entitled Recommendations for Enhancing Reactor Safety in the 21st Century: The

Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident at 20-21 (July 12, 2011) (“Task Force Report”).

## **II. DISCUSSION**

### **A. General Solution**

The general solution sought by Intervenor is to rescind all regulations in 10 C.F.R. Part 51 which reach generic conclusions about the environmental impacts of severe reactor and/or spent fuel pool accidents and therefore prohibit consideration of those impacts in reactor licensing proceedings. These regulations include 10 C.F.R. Part 51, Appendix B; 10 C.F.R. §§ 51.45, 51.53, and 51.95.

### **B. Intervenor’s Grounds for and Interest in the Action Requested.**

Intervenor seeks rescission of any NRC regulations that would prevent the NRC from complying with its obligation under the National Environmental Policy Act (“NEPA”) and NRC implementing regulations to consider, in the licensing proceeding for Comanche Peak Units 3 & 4, the environmental implications of new and significant information discussed in the Task Force Report regarding the regulatory implications of the Fukushima Dai-ichi nuclear accident. Intervenor’s legal and technical grounds for seeking consideration of new and significant information in the Task Force Report are discussed at length in the attached Contention, which is attached and incorporated herein by reference.

### **C. Support for Petition**

This petition for rulemaking is supported by the Task Force Report and also by the attached Declaration of Dr. Arjun Makhijani (August 8, 2011). As demonstrated in both of those documents, the Fukushima accident has significant regulatory implications with respect to both severe reactor accidents and spent fuel pool accidents, because the Task Force Report

recommends that mitigative measures for both of these types of accidents, which are not currently included in the design basis for nuclear reactors, should be added to the design basis and subject to mandatory safety regulation.

#### **D. Request for Suspension of Licensing Proceeding**

As discussed in the attached Contention, NEPA requires that agencies consider the environmental impacts of their actions *before* they are taken, in order to ensure that “important effects [of the licensing decision] will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Robertson*, 490 U.S. 332, 349 (1989). *See also* 40 C.F.R. §§ 1500.1(c), 1502.1, 1502.14. The NRC’s obligation to comply with NEPA in this respect is independent of and in addition to the NRC’s responsibilities under the Atomic Energy Act, and must be enforced to the “fullest extent possible.” *Calvert Cliffs Coordinating Committee*, 449 F.2d at 1115. *See also Limerick Ecology Action v. NRC*, 869 F.2d 719, 729 (3rd Cir. 1989) (citing *Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 86 (1st Cir. 1978)). The NRC’s obligation to delay licensing decisions until after it has considered the environmental impacts of those decisions is also nondiscretionary. *Silva v. Romney*, 473 F.2d 287, 292 (1st Cir. 1973). Therefore the NRC has a non-discretionary duty to suspend the COL licensing proceeding while it considers the environmental impacts of that decision, including the environmental implications of the Task Force Report with respect to severe reactor and spent fuel pool accidents.

### III. CONCLUSION

For the foregoing reasons, the Commission should grant this rulemaking petition.

Respectfully submitted this 11th day of August 2011.

*Signed (electronically) by Robert V. Eye*

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**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2011 a copy of "Intervenors' Eighteenth Update to Disclosures" was served by the Electronic Information Exchange on the following recipients:

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